

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This is an application filed by the Landlord for damage to the unit, site or property, for unpaid rent, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony.

At the outset of the hearing it was determined in the application and discussions with both parties that there was no unpaid rent. The Landlord is seeking the recovery of the loss rental income for April and May of \$1,500.00 for each month for a total of \$3,000.00 for the end of the fixed term tenancy. The Landlord is also seeking to keep the \$750.00 security deposit for costs associated to expenses for damages and advertising.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for loss of rental income and damages?
Is the Landlord entitled to retain the security deposit?

Background and Evidence

This tenancy began on September 15, 2010 on a fixed term tenancy for 11 months ending on July 31, 2011 as shown in the submitted signed tenancy agreement. The monthly rent was \$1,500.00 payable on the 1st of each month and a security deposit of \$750.00 was paid on August 31, 2010. The Landlord was able to re-rent the unit on June 1, 2011 at \$1,600.00 per month.

The Landlord states that the Tenant was served with the notice of hearing package in person at the Tenant's place of work on April 4, 2011. The Tenant has confirmed that she received the package on this date for herself and her co-tenant, B.M. The Tenant has confirmed that the co-tenant is aware of the Tenancy Dispute, but is not aware of the facts.

The Tenant's gave notice to end the tenancy on February 28, 2011 with a move-out date indicated as March 31, 2011. The Landlord states that she began to advertise the

rental unit for re-rental on March 1, 2011. The Tenant's vacated and ended the Tenancy on March 31, 2011. This is confirmed by the Tenant. The Landlord states that during the month of March that she was not able to re-rent the unit because of "unpleasant living conditions". The Landlord states that the unit was dirty, messy and smelled bad. The Tenant states that the Landlord was aware of the state of the rental unit because of her injury and her lack of ability to clean the unit. The Landlord still wanted to show the unit as shown in the submitted email discussions.

The Landlord is seeking the recovery of loss of rental income for April and May rents of \$1,500.00 each, totalling \$3,000.00. The Tenant has confirmed breaching the Tenancy Agreement due to issues cited with the Tenancy.

The Landlord is also seeking to keep the \$750.00 security deposit for cleaning, damages and advertising expenses associated to the rental unit. The Landlord relies on the completed condition inspection report. The Landlord has supplied a receipt for \$55.00 for steamed carpet cleaning of the rental unit. The Landlord has also offered direct testimony stating that because she was out of work at the time that all work completed was done by her. The Landlord has stated that because of her unemployment that any damages were repaired by herself. The Landlord is seeking recovery of damages to a broken remote, bathtub damage, broken blinds, patio door damage, wall damage, broken light fixture, a broken tile in the hallway and light bulbs. The Landlord has not supplied details of any expenses incurred. The Tenant has disputed the Landlord's claims citing the condition inspection report that shows that these items existed at the start of the tenancy as noted in the move-in portion of the condition inspection report.

Analysis

I am satisfied based upon the direct testimony of both parties that the Tenants were properly served with the notice of hearing documents. In this case, a co-tenancy exists. Co-Tenant's are jointly and severally liable for any debts or damages relating to the tenancy. Residential Tenancy Policy Guideline #13 states that, this means that the landlord may seek to recover full damages from all or any of the tenants.

Based upon the direct testimony of both parties, I am satisfied that the Tenants breached the fixed term tenancy. The Landlord immediately tried to mitigate the loss by re-advertising the rental unit on March 1, 2011 with no success. The Landlord made frequent attempts to show the rental unit during the month of March. The Landlord has established a loss of rental income for \$3,000.00. I note that the Landlord was able to re-rent the unit on June 1, 2011 at \$1,600.00. As per Residential Tenancy Policy

Guideline #3 which states, in a fixed term tenancy, if a landlord is successful in re-renting the premises for a higher rent and as a result receives more rent over the remaining term that would otherwise have been received (\$100.00 more for the month of June and July 2011), the increased amount of rent is set off against any other amounts owing to the landlord. The Tenant is credited with \$200.00 from the increased rental rate in the new tenancy agreement.

I also find through the Landlord's own contradictory evidence that she has failed to establish a claim for expenses incurred for advertising. The Landlord stated that she printed her own flyers and posted them around the neighbourhood, thus incurring no expense. The Landlord has provided no evidence as to any advertising costs incurred. The Landlord has established that damage in the form of cleaning was required for the end of tenancy, but has provided contradictory evidence. I find that the Landlord has failed to provide a cost incurred for any cleaning as she has stated that all of the work was performed by herself. The Tenant has confirmed that basic cleaning was required. The Landlord has established a claim, but has failed to provide any evidence to support any costs incurred. I award to the Landlord based upon the condition inspection report, 3 hours @ \$20.00 per hour for a total of \$60.00 for general cleaning.

I find that the Landlord has established a total monetary claim for \$2,860.00. The Landlord is also entitled to recovery of \$50.00 from the filing fee. The Landlord's original application was amended without bias to the Tenant of \$6,750.00 to \$3,750.00. The amended amount is below the \$5,000.00 required for the increased application fee. I order that the Landlord retain the \$750.00 security deposit in partial satisfaction of the claim and I grant an order under section 67 for the balance due of \$2,160.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted a monetary order for \$2,160.00.
The Landlord may retain the security deposit.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 18, 2011.

Residential Tenancy Branch